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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048879
Party	Plaintiff NOR-CAL BEVERAGE CO., INC.
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Submission	Answer to Counterclaim
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Date	06/26/2009
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IN THE UNITED STATES TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Reg. No. 2,227,005

Trademark: GO GIRL

NOR-CAL BEVERAGE CO., INC.,)	
)	
Petitioner And Counterclaim Defendant,)	Cancellation No. 92048879
)	
v.)	
)	
IRENE J. ORTEGA, dba GOGIRL ACTIVEWEAR,)	
)	
Respondent And Counterclaim Plaintiff.)	

PETITIONER’S ANSWER TO COUNTERCLAIM FOR CANCELLATION

NOW COMES PETITIONER, NOR-CAL BEVERAGE CO., INC. (hereinafter, “NOR-CAL”), answering Respondent’s Counterclaim For Cancellation of NOR-CAL’S Registration No. 3,235,947 (hereinafter, “Respondent’s Counterclaim”), by paragraphs numbered sequentially from those set forth in NOR-CAL’S Amended Petition To Cancel, as follows:

Introductory Paragraph: NOR-CAL is without knowledge or information sufficient to form a belief regarding the allegations contained in the Introductory Paragraph of Respondent’s Counterclaim, and on that basis, denies said allegations.

26. NOR-CAL is informed and believes that Irene J. Orettega-Eldon is an individual residing in Temecula, California. NOR-CAL is without knowledge or information sufficient to form

a belief regarding the remaining allegations contained in Paragraph 35 of Respondent's Counterclaim, and on that basis, denies said allegations.

27. NOR-CAL is without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 36 of Respondent's Counterclaim, and on that basis, denies said allegations.

28. NOR-CAL is without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 37 of Respondent's Counterclaim, and on that basis, denies said allegations.

29. NOR-CAL is without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 38 of Respondent's Counterclaim, and on that basis, denies said allegations.

30. NOR-CAL states that Registration No. 3,235,947 was granted for the mark GO GIRL, in International Class 32, for Non-Alcoholic Beverages, Namely, Energy Drinks, and that said Registration recites a date of first use of the mark as May 15, 2005. NOR-CAL is without knowledge or information sufficient to form a belief regarding the remaining allegations contained in Paragraph 39 of Respondent's Counterclaim, and on that basis, denies said allegations.

31. NOR-CAL denies each and every allegation contained in Paragraph 40 of the Respondent's Counterclaim.

32. NOR-CAL denies each and every allegation contained in Paragraph 41 of the Respondent's Counterclaim.

33. NOR-CAL denies each and every allegation contained in Paragraph 42 of the Respondent's Counterclaim.

34. NOR-CAL denies each and every allegation contained in Paragraph 43 of the Respondent's Counterclaim.

35. NOR-CAL denies each and every allegation contained in Paragraph 44 of the Respondent's Counterclaim.

AFFIRMATIVE DEFENSES

36. Respondent's Counterclaim fails to state a claim for which relief can be granted.

37. Respondent's Counterclaim fails, because Respondent does not have the exclusive right to use the mark GO GIRL, alone or in combination with other terms, in connection with clothing or other goods.

38. Respondent's Counterclaim is barred under the equitable doctrine of unclean hands, based upon inequitable conduct and fraud associated with the acquisition, maintenance, and enforcement of Registration No. 2,227,005 for GO GIRL.

39. Respondent's Counterclaim fails, because NOR-CAL'S use of GO GIRL SUGAR FREE ENERGY DRINK in connection with clothing items, is a fair use of GO GIRL, in that it is merely used to advertise and promote NOR-CAL'S Energy Drink products.

WHEREFORE, NOR-CAL prays that the Respondent's Counterclaim be dismissed in its entirety, with prejudice.

Respectfully submitted,

Dated: June 26, 2009

/R. Michael West/
R. Michael West

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the telephone and facsimile numbers
for this communication are:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITIONER'S ANSWER TO COUNTERCLAIM FOR CANCELLATION was mailed by First Class Mail, postage prepaid, to Barry F. Soalt, Esq., Procopio Cory Hargreaves & Savitch LLP, 530 B Street, Suite 2100, San Diego, California 92101, on: June 26, 2009.

Dated: June 26, 2009

/Lee Chase/
Lee Chase